Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
Policy and Rules Concerning the Interstate Interexchange Marketplace	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as Amended	

Comments of the State of Hawaii

The State of Hawaii,[1] by its attorneys, hereby replies to the Commission's request for comment on the issues raised in the *Notice of Proposed Rulemaking* issued in the above-captioned proceeding.[2]

I. INTRODUCTION AND STATEMENT OF INTEREST

The State of Hawaii has long supported the policy of rate integration. Even after it was admitted to statehood, for many years mainland carriers classified Hawaii (and other offshore points)[3] as an international point and established "separate" rate structures for the State.

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[1] The State submits these comments acting through its Department of Commerce and Consumer Affairs.

[2] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as Amended,* FCC 99-43, CC Docket No. 96-61 (rel. April 21, 1999) ("*Notice*").

[3] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as Amended,* 11 FCC Rcd 9564, 9596 (1996) ("*First Report & Order*").

As a result, the rates for services to and from Hawaii were higher than rates for comparable services offered on the Mainland. This situation adversely affected the State's citizens, its economy, and, ultimately, the Nation as a whole.

To remedy this historical pattern of discrimination, the Commission adopted the policy of rate integration, which requires a carrier serving "offshore" points to employ the same rate structure that it employs for non-remote locations. Recognizing the importance of this policy to the broader national objective of promoting universal service, Congress codified and expanded the Commission's rate integration policy in Section 254(g) of the Telecommunications Act of 1996.[4] The Commission recently reaffirmed that this statutory rate integration requirement applies to *all* providers of interstate, interexchange services, including CMRS providers.[5]

As explained in the *Notice*, the State has previously stated its position on the application of rate integration to CMRS wide area calling plans, affiliates, airtime and roaming charges, and classes of CMRS services. To assist in its consideration of these issues, the Commission has requested specific information concerning geographically discounted offerings, ownership arrangements, charges, and the percentages of local and long distance calls. CMRS providers are, of course, in the best position to provide this information in the first instance. The

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[4] Congress also codified and expanded the policy of geographic rate averaging in Section 254(g) of the Telecommunications Act of 1996. This policy requires carriers to offer the same services, at the same rates, for the same distance, regardless of the location of the terminal points.

[5] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as Amended,* FCC 98-347, CC Docket No. 96-61, at ¶ 34 (rel. Dec. 31, 1998) ("*CMRS Order*").

State is hopeful that they will be forthcoming in responding to the Commission's request and plans to reply to any specific proposals advanced by CMRS interests.

In general, the State believes that the Commission should be guided by a few basic principles in applying rate integration to CMRS. First, consistent with the special importance that Congress placed on the national policy of rate integration and the agency's prior findings, the Commission should not permit CMRS providers to use this proceeding to circumvent their rate integration obligations. Second, the Commission should not take any action in this proceeding that would undermine the universal service goals of rate integration or permit rate discrimination against offshore points. To the contrary, the Commission should encourage the widespread availability of new, more attractive rate structures for interstate, interexchange CMRS services.

II. THE COMMISSION SHOULD NOT PERMIT CMRS PROVIDERS TO CIRCUMVENT THEIR STATUTORY RATE INTEGRATION OBLIGATIONS

In enacting the Telecommunications Act of 1996, Congress placed special "importance" on universal service and, in particular, "on a nationwide policy of rate integration."[6] This policy, the Commission has determined, is intended to apply to CMRS providers and, indeed, is "necessary" to ensure that nondiscriminatory charges and practices are offered for CMRS services to and from offshore points.[7] The Commission should not take "any

[6] *Id.* at ¶ 34.

[7] *See id.* at ¶ 30.

action in this proceeding that would send the wrong signal about the statutory rate integration requirement established by Congress."[8]

More specifically, in addressing the limited issues raised in the *Notice*, the Commission should ensure that CMRS providers do not attempt to circumvent their rate integration obligations. In this regard, the Commission should reject the suggestion made by some CMRS providers that they should be able to "establish *any area they choose* as the 'exchange' area" for purposes of Section 254(g).[9] As explained in the *Notice*, the State believes that such an open-ended delegation would grant CMRS providers the ability to exclude calls involving offshore points from large Mainland calling areas where more favorable rate structures prevail.[10] This, in turn, would effectively eviscerate Section 254(g)'s rate integration requirements for interstate, interexchange services and undermine the universal service objectives that Congress sought to achieve in enacting that provision. The State, therefore, urges the Commission to consider carefully any proposals that would confer a blanket license on CMRS providers to classify as *intra*exchange calls that, by any reasonable standard, would otherwise be considered *inter*exchange.[11]

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[8] Letter from Senators Ted Stevens and Daniel Inouye, United States Senate, to William E. Kennard, Chairman, FCC, CC Docket No. 96-61 (Dec. 14, 1998); *see CMRS Order* at ¶ 34 n.86.

[9] *Notice* at ¶ 11 (emphasis added).

[10] *See id.* at ¶ 12.

[11] In another context, the Commission has rejected a similar invitation to eliminate a statutory requirement through large scale changes to regulatory boundaries. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 98-188, CC Docket No. 98-147, at ¶¶ 81, 82 (rel. Aug. 7, 1998) (rejecting the attempt made by several BOCs to avoid Section 271's requirements by having the Commission make large scale changes to LATA boundaries). As explained by the Commission, this type of regulatory gerrymandering is "functionally no different" than forbearance. *Id.* The Commission, therefore, should require any CMRS providers seeking to use this proceeding to gut Section 254(g)'s rate integration requirements to satisfy the forbearance

The Commission also should consider carefully any claims made by CMRS providers suggesting that their services do not fit within the local exchange/interexchange framework used for wireline services. Like wireline interexchange calls, most long distance CMRS calls are completed predominantly through the use of wireline plant, which can readily be classified as interexchange or local in nature.[12] Further, the Commission has recognized that CMRS providers, like their wireline counterparts, have the ability to distinguish between local and interexchange calls.[13] Finally, many CMRS plans distinguish between local and long distance services for purposes of rates charged to consumers. If any CMRS providers attempt to avoid their rate integration obligations by claiming that, unlike wireline offerings, their services cannot be classified as exchange or interexchange, the Commission should require them to disclose the extent to which they use wireline facilities to complete interstate, interexchange calls.

III. CONSISTENT WITH SECTION 254(g)'s UNIVERSAL SERVICE GOALS, THE COMMISSION SHOULD PROMOTE THE WIDESPREAD OFFERING OF MORE FAVORABLE RATE STRUCTURES

Section 254(g) of the Communications Act is vital to the overall commitment to universal service made by Congress in the Telecommunications Act of 1996. As the Commission has recognized, this policy "has integrated offshore points into the domestic

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criteria set forth in Section 10(a) of the Communications Act. *See* 47 U.S.C. § 160(a). The CMRS industry has previously failed in its efforts to do so.

[12] *See Petition for Reconsideration of Nextel Communications, Inc.*, CC Docket No. 96-61, at 6 (filed March 4, 1999).

[13] *See CMRS Order* at ¶ 23; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 FCC Rcd 15499, 16017 (1996).

interstate, interexchange rate structure so that the benefits of growing competition for interstate interexchange telecommunications services . . . are available *throughout our nation.*"[14] Consistent with this statutory purpose, the Commission should use this proceeding to encourage the widespread offering of more competitive rate structures for interstate, interexchange CMRS services, including those for calls to and from remote areas.

As recognized in the *Notice*, through mergers, acquisitions, and joint ventures, the operations of CMRS providers are becoming increasingly national in scope.[15] This trend towards nationwide footprints and offerings plainly weighs against the creation of the exceptions advocated by CMRS interests. Indeed, nationwide CMRS services have the potential to bring much needed competition to wireline carriers, especially for consumers in remote areas. Under no circumstances should the Commission permit the systematic exclusion of calls involving these consumers from the new, more attractive rate structures for interstate, interexchange services that CMRS providers are increasingly offering. Doing so would return the State (as well as other offshore points) to the historical pattern of discrimination that it endured prior to the adoption of rate integration in 1976. It also would defeat the very purpose of Section 254(g): to ensure that affordable and nondiscriminatory rates are available for calls to and from offshore points.

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[14] *See First Report & Order,* 11 FCC Rcd at 9583 (emphasis added).

[15] *See Notice* at ¶ 9. This trend weighs against the creation of any regional exceptions to Section 254(g)'s rate integration requirements.

IV. THE COMMISSIONS SHOULD ADOPT A NEW STANDARD FOR RATE INTEGRATION ACROSS AFFILIATES

The State supports the Commission's tentative conclusion that rate integration across affiliates is required by Section 254(g).[16] While the State is opposed to limiting the term "affiliate" to CMRS providers that are identically owned by a single provider, it has previously stated that it supports a limited modification to the definition of this term for purposes of applying rate integration to CMRS providers.[17] To identify a workable standard for identifying affiliated carriers, the Commission should require CMRS providers to provide more specific information about the ownership structures that they have described previously only in general terms.

[16] *See Notice* at ¶ 18.

[17] *See id.* at ¶ 20.

CONCLUSION

The Commission should not take any action in this proceeding that would permit CMRS providers to avoid their statutory rate integration obligations. Instead, the Commission – consistent with the intent of Congress – should promote the widespread availability of more affordable and non-discriminatory rates for CMRS services involving offshore points.

Respectfully submitted,

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